IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH

MONDAY, THE 19TH NOVEMBER 2007 / 28TH KARTHIKA 1929

WA.No. 2723 of 2007

AGAINST THE INTERIM ORDER IN WPC.15010/2007 Dated 25/07/2007

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APPELLANTS/RESPONDENTS:
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1. STATE OF KERALA,
   REPRESENTED BY ITS SECRETARY TO GOVERNMENT,
   GOVERNMENT SECRETARIAT,
   THIRUVANANTHAPURAM.

2. THE CUSTODIAN
   APPOINTED UNDER THE KERALA FOREST (VESTING & MANAGEMENT OF ECOLOGICALLY FRAGILE LANDS) ORDINANCE 3 OF 2001
   (PRINCIPAL CHIEF CONSERVATOR OF FORESTS),
   THIRUVANANTHAPURAM.

3. DIVISIONAL FOREST OFFICER,
   KOZHIKODE.

4. FOREST RANGE OFFICER,
   PERUVANNAMOOZHI RANGE.

BY SPECIAL GOVERNMENT PLEADER SRI.RANJITH THAMPAN.

RESPONDENTS/ PETITIONERS:
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1. A.PREMAKUMARI,
   POZHICKAL HOUSE,
   KANICHUKULANGARA P.O.
   CHERTHALA -688544.

2. A.PRASOBHA,
   VELLAPPALLY HOUSE,
   KANICHUKULANGARA P.O.,
   CHERTHALA-688544.

3. DILEEP KUMAR.K.R.,
   DILEEP SADANAM,
   KANICHUKULANGARA P.O.,
   CHERTHALA-688544.

4. A.PRASANNAKUMARI,
   48/347, VRINDAVANAM, PERANDOOR ROAD,
   ELAMAKKARA,
   COCHIN-682 026.

5. A.SULOCHANA,
   KOLLADICKAL HOUSE,
   S.N.PURAM P.O.,
   CHERTHALA.

6. A.GIRIJAKUMARI,
   DWARAKA, NEAR IOC PUMB,
   PACCOOR, VANCHIYOOR PO.,
   THIRUVANANTHAPURAM.

7. K.R.ASKHAJ,
   S/O.K.R.RAVEENDRANATHAN,
   KANICHUKULANGARA P.O.-688544.

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 19/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L.DATTU, C.J. & K.M.JOSEPH, J.

W.A.No.2723 of 2007

Dated, this the 19th day of November, 2007

JUDGMENT

H.L.Dattu, C.J.

Questioning the correctness or otherwise of an interim order passed by the learned Single Judge in W.P.(C) No.15010 of 2007 dated 25th July, 2007, the State Government is before us, in this appeal.

(2). The petitioners in the writ petition had called in question Ext.P14 order passed by the Divisional Forest Officer, Kozhikode Division. The consequential prayer that was sought for in the writ petition is to declare that the petitioners' cardamom estate covered under Ext.P4 registration is exempted from the purview of the Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Ordinance 3 of 2001 or Act 21 of 2005. Lastly, for a direction to respondents 2 to 4 not to interfere with the peaceful possession and enjoyment of the petitioners' cardamom estate covered by Ext.P4 registration.

(3). By way of interim relief, the petitioners had sought for a direction to respondents 2 to 4 in the writ petition, not to interfere with the petitioners' peaceful possession and enjoyment of the property comprised in Re.Sy.No.912 of Chakkittapara Village, Quilandy Taluk, Calicut District and not to obstruct the Agricultural operations carried on in the land, pending disposal of the writ petition.

(4). It is the specific case of the petitioners that they are in possession and cultivation of cardamom estate and also carrying on agricultural operations in the lands comprised in Re.Sy.No.912 of Chakkittapara Village.

(5). According to the petitioners, in view of the definition of *'Ecologically Fragile Lands*' and *'Forests*', the cardamom plantation is exempted both under the Ordinance as well as under the Act. Therefore, they are of the view that their lands cannot come within the meaning of the expression '*Ecologically Fragile Lands'* and thereby, the provisions of Act 2005 which has given retrospective effect from 2-6-2000 would not apply to the petitioners land.

(6). The respondents have filed their counter affidavits.

(7). The learned Single Judge, taking into consideration that the petitioners are in possession and enjoyment of the lands comprised in Re.Sy.No.912 of Chakkittapara Village, Quildany Taluk, Calicut District, and, further being of the opinion that, during the pendency of the writ petition the possession of the petitioners should not be disturbed by the respondents till the disposal of the writ petition, has granted an interim order directing respondents 2 to 4 not to interfere with the possession of the petitioners until further orders. Further, he has made it clear that the petitioners apart from carrying out agricultural operations, shall not cut or remove trees or cause any destruction to the property.

(8). The State Government in its counter affidavit has stated that the property comprised in Re.Sy.No.912 of Chakkittapara Village is not a cardamom estate, and, therefore, the petitioners cannot contend that either the Ordinance or the Act would not apply to their case. In our opinion, these are matters which requires to be heard and decided by the learned Single Judge at the time of hearing of the main matter.

(9). The learned Judge, taking into consideration that the

possession is with the petitioners, has thought it fit to direct the respondents not to disturb the petitioners' possession until further orders.

(10). The meaning of the expression '*Unitl Further Orders'* would only mean till subsequent orders are passed by the Court. If, for any reason, the State Government was aggrieved by the orders passed by the learned Judge, it could have filed appropriate application before the learned Judge himself for modification/vacating the interim order. Even otherwise also, it is not in dispute nor it can be disputed that the petitioners are in possession and cultivation of lands in question. The question, whether, in view of the Ordinance which has been replaced by the Act, the land in question has been vested or deemed to have been vested is a mater which requires to be considered at the time of hearing the main matter and till such time possession of the petitioner requires to be protected and that is what that has been done by the learned Single Judge by granting the interim relief.

(11). In view of the above, in our opinion, the interim order passed by the learned Single Judge need not be interfered with, by us, in the writ appeal filed by the State Government. Therefore, the writ appeal requires to be rejected and we do so.

Ordered accordingly.

(H.L.DATTU)
CHIEF JUSTICE

(K.M.JOSEPH)
JUDGE

MS/DK